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Attorney for Petitioner Kevin Dugan

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	Case No.: CR 03-20010 RMW
	)	
Plaintiff-Appellee,	)	
	)	DEFENDANT'S
vs.	)	
	)	(1) <b><u>UNOPPOSED</u></b> MOTION FOR LIMITED
KEVIN DUGAN,	)	DISCLOSURE OF PRESENTENCE
	)	REPORT FOR PURPOSES OF APPEAL;
Defendant-Appellant.	)	
	)	(2) DECLARATION OF MARK D. EIBERT
	)	IN SUPPORT THEREOF; AND
	)	
	)	(3) <input type="checkbox"/> ORDER

I, Mark D. Eibert, declare as follows:

1. I am an attorney at law licensed to practice before this Court, and I am the appointed attorney of record for Defendant Kevin Dugan in the Ninth Circuit appeal of this case (Appeal No. 08-10579). If called as a witness, I could and would competently testify to the facts contained in this pleading.

2. I need to review the Presentence Report (including any addenda thereto, such as any Probation Office responses to objections to the draft PSR and the final sentencing recommendation) in the above district court case for purposes of making possible sentencing arguments in the pending Ninth Circuit appeal. I have already made unsuccessful efforts to get it from prior counsel, my client, the government, and the Probation Office. The Probation Officer has informed me that I will need a Court Order for them to release it to me.

DEFENDANT'S MOTION FOR LIMITED DISCLOSURE OF PRESENTENCE REPORT,  
United States v. Dugan, CR 03-20010 RMW

1           3. The Assistant U.S. Attorney handling this appeal, Ms. Merry Jean Chan, has  
2 graciously stated that she does not oppose this request. The Probation Officer, Ms. Lori  
3 Timmons, has also graciously stated that she has no objection to providing Mr. Dugan's PSR to  
4 me (his counsel of record on appeal) as long as the Court issues an Order allowing it.

5           4. Ninth Circuit Rule 30-1.10 already requires that "[i]n all cases in which the  
6 presentence report is referenced in the brief, the party filing such brief must forward four copies  
7 of the presentence report and may forward four (4) copies of any other relevant confidential  
8 sentencing documents under seal to the Clerk of the Court.... The presentence report **shall**  
9 **remain under seal** but be provided by the Clerk to the panel hearing the case" on appeal.  
10 (Emphasis added).

11           5. The current due date of the Appellant's Opening Brief in this case is January 22,  
12 although a motion for a 28 day extension of time to file that brief is now pending.

13           6. For the foregoing reasons, undersigned counsel respectfully requests that the Court  
14 issue an Order for the Probation Office to release the Presentence Report (including any addenda  
15 thereto) to undersigned appellate counsel for the limited purpose of use in the appeal of this case.  
16 A proposed Order is below.

17           7. A copy of this ex parte Order is being served on government trial counsel by PACER,  
18 and on government appellate counsel by both e-mail and U.S. Mail. It is also being served on  
19 the Probation Officer, Ms. Timmons, by U.S. Mail.

20           I declare under penalty of perjury that the foregoing is true and correct to the best of my  
21 knowledge and belief. Executed at Half Moon Bay, California on January 20, 2010.

22                               Respectfully submitted,

23                               /s/ Mark D. Eibert

24                               \_\_\_\_\_  
25                               MARK D. EIBERT

26                               Attorney for Defendant Kevin Dugan

**ORDER**

Good cause appearing therefore, it is hereby ORDERED as follows:

1. The Presentence Report (including any addenda thereto, such as any Probation Office responses to objections in the draft PSR and the final sentencing recommendation) in the above district court case shall be provided by the Probation Office to defense counsel Mark Eibert for the limited purpose of using it in the appeal of this case.

2. If the Presentence Report (or any addenda thereto) is filed with the Court of Appeals, it shall be filed under seal pursuant to Ninth Circuit Rule 30-1.10 unless otherwise directed by the Ninth Circuit.

IT IS SO ORDERED.

Date: 2/9/10

  
HON. RONALD WHYTE  
United States District Judge

## PROOF OF SERVICE

The undersigned hereby certifies that his business address is Post Office Box 1126, Half Moon Bay, CA 94019-1126, that he is not a party to this action, and that he is a citizen of the United States and a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on this date he caused a copy of:

DEFENDANT'S UNOPPOSED MOTION FOR LIMITED DISCLOSURE OF PRESENTENCE  
REPORT FOR PURPOSES OF APPEAL

Re: United States v. Kevin Dugan, CR 03-20010 RMW

To be served both by e-mail to the e-mail address below and by placing it in the mail at Half Moon Bay, California in a post-paid envelope sealed and addressed to:

Ms. Merry Jean Chan  
Assistant U. S. Attorney  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102

E-mail address: merry.chan@usdoj.gov

And to be served by placing it in the mail at Half Moon Bay, California in a post-paid envelope sealed and addressed to:

Ms. Lori Timmons  
U.S. Probation Officer  
280 S. First Street, Suite 106  
San Jose, CA 95113-3003

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 20, 2010 at Half Moon Bay, California.

/s/ Mark D. Eibert

MARK D. EIBERT

DEFENDANT'S MOTION FOR LIMITED DISCLOSURE OF PRESENTENCE REPORT,  
United States v. Dugan, CR 03-20010 RMW